No. 22–99006

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLARENCE WAYNE DIXON

Petitioner-Appellant,

v.

DAVID SHINN, ET AL.,

Respondents-Appellees.

On Appeal from the United States District Court
for the District of Arizona
No. CV 14–00258–PHX–DJH

RESPONDENTS-APPELLANTS' SIMULTANEOUS BRIEF ON PETITIONER-APPELLANT'S NOTICE OF APPEAL FROM DISTRICT COURT'S DENIAL OF HABEAS RELIEF, DENIAL OF A STAY OF EXECUTION, AND DENIAL OF A COA
EXECUTION SCHEDULED FOR MAY 11, 2022 AT 10:00 AM MST

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In his appeal from the district court's order denying habeas relief, denying a stay of execution, and denying a certificate of appealability, Petitioner Clarence Wayne Dixon seeks to prevent Arizona from carrying out his lawfully-imposed sentence less than 24 hours from now, at 10:00 a.m. on May 11, 2022. As grounds, Dixon contended in the district court that the state courts' conclusion that Dixon is competent to be executed was not an unreasonable decision with which no fair-minded jurist could agree. Because the state courts applied the correct Supreme Court standard for competency to be executed and reached a decision based on reasonable determinations of the facts, Dixon's claim lacks merit and his request to stay tomorrow's execution should be denied.[1]

I. FACTUAL AND PROCEDURAL BACKGROUND.

A. Dixon's convictions and capital case.

This Court detailed the facts of Dixon's case and his criminal history in its 2019 opinion affirming the district court's denial of habeas relief. *Dixon v Ryan (Dixon IV)*, 932 F.3d 789, 795–800 (9th Cir. 2019). In June 1977, Dixon struck a teenage girl with a metal pipe and was charged with assault with a deadly weapon. *Id.* at 796. Dixon was determined not competent to stand trial by two court-

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[1] The statutory victim under A.R.S. § 13–4401(19), Ms. Leslie James, the sister of Deana Bowdoin, has conveyed to Respondents-Appellees that she asserts her right under 18 U.S.C. § 3771(a)(7) "to proceedings free from unreasonable delay."

appointed psychiatrists, went through restoration proceedings, and was found not guilty by reason of insanity. *Id.* Dixon was released pending civil proceedings on January 5, 1978. *Id.*

The next day, Deana Bowdoin, a 21-year-old ASU student, was found dead in her apartment. *State v. Dixon (Dixon II)*, 226 Ariz. 545, 548, ¶¶ 2–3 (2011). She had been strangled with a belt and stabbed. *Id.* Investigators found semen on Deana's underwear but were unable to match the resulting DNA profile to any suspect. *Id.*

In 1985, Dixon violently sexually assaulted a 20-year-old student near the Northern Arizona University (NAU) campus in Flagstaff. *State v. Dixon (Dixon I)*, 153 Ariz. 151, 152 (1987). The NAU police department played a significant role in investigating the crime; NAU police responded to the victim's call, took the victim's statement, broadcast an "attempt to locate" call with the suspect's description, and, after Flagstaff police arrested Dixon, showed the victim a photographic lineup in which she identified Dixon and allowed her to view Dixon in person, during which she identified him. *Id.* at 152–53.

In 2001, a Tempe Police detective checked the DNA profile from the semen on Deana Bowdoin's underwear and found that it matched that of Dixon, whose DNA profile was in a national database as a result of his 1985 convictions. *Dixon II*, 226 Ariz. at 548, ¶ 4; *Dixon IV*, 932 F.3d at 796. Dixon had lived across the

street from Deana at the time of the murder, and her friends and family knew of no previous contact between them. *Dixon II*, 226 Ariz. at 548–49, ¶ 4.

Dixon was charged with first degree murder. *Dixon II*, 226 Ariz. at 549, ¶ 5. Before trial, Dixon sought to represent himself because his appointed counsel would not file a motion he requested them to file. *Dixon IV*, 932 F.3d at 797. The issue Dixon sought to present "involves Dixon's theory that NAU officers lacked statutory authority to investigate the case because the NAU police force was not a legal entity in 1985. Therefore, because the NAU police lacked authority, he was wrongfully arrested, his 1985 conviction was 'fundamentally flawed,' and the DNA comparison made pursuant to his invalid conviction should be suppressed. (Dist. Ct. Order 5/10/22, at 8.) Dixon fired his court-appointed attorneys and represented himself at trial. *Id.* He filed a Motion to Suppress the DNA evidence based on his NAU police legal theory. *Id.*

Dixon was convicted of first degree murder and sentenced to death. *Dixon II*, 226 Ariz. at 549, ¶ 5. Throughout the ensuing years, Dixon's attorneys argued that, among other things, his "perseveration" on the DNA suppression issue regarding the NAU police showed his lack of competency to waive counsel. The state and federal courts uniformly rejected this contention. In the habeas proceeding, the district court concluded that "Dixon's obsession with the NAU suppression motion was not so bizarre as to suggest incompetence," citing

numerous decisions reaching that same conclusion regarding other criminal defendants:

> "Criminal defendants often insist on asserting defenses with little basis in the law, particularly where, as here, there is substantial evidence of their guilt," but "adherence to bizarre legal theories" does not imply incompetence. *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014) (noting defendant's "persistent assertion of a sovereign-citizen defense"); *see United States v. Kerr*, 752 F.3d 206, 217–18 (2d Cir.), *as amended* (June 18, 2014) ("Kerr's obsession with his defensive theories, his distrust of his attorneys, and his belligerent attitude were also not so bizarre as to require the district court to question his competency for a second time."). "[P]ersons of unquestioned competence have espoused ludicrous legal positions," *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003), "but the articulation of unusual legal beliefs is a far cry from incompetence." *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008) (explaining that defendant's "obsession with irrelevant issues and his paranoia and distrust of the criminal justice system" did not imply mental shortcomings requiring a competence hearing).

Dixon III, 2016 WL 1045355 at *9. This Court agreed, finding that the record in Dixon's capital case contained "no evidence of competency issues at any time throughout the course of these proceedings," and that the record demonstrated that at the time Dixon sought to represent himself he "understood the charges against him and the potential sentences, he was able to articulate his legal positions and respond to questions with appropriate answers, and that Dixon demonstrated rational behavior." *Id.* Significantly, the court stated that Dixon's interest in the DNA suppression issue "was not so bizarre or obscure as to suggest that Dixon lacked competence." *Id.*

B. Competency to be Executed Proceeding.

On April 5, 2022, upon the State's motion and after Dixon concluded his direct appeal, first postconviction relief, and federal habeas corpus proceedings, the Arizona Supreme Court issued a warrant of execution setting an execution date of May 11, 2022. (Warrant of Execution.) On April 9, 2022, Dixon filed a motion for determination of competency under A.R.S. § 13–4022, contending that his very same focus on the DNA suppression issue which failed to establish his lack of competency to waive counsel provided reasonable grounds for an examination into whether he lacks a rational understanding of the State's reason for seeking his execution. (Motion for Determination of Competency.) The superior court granted his request the same day it was filed, finding that Dixon's motion "satisfie[d] the minimum required showing that reasonable grounds exist for the requested examination and hearing, within the meaning of A.R.S. § 13–4022(C) and as otherwise required by *Ford v. Wainwright*," and set an evidentiary hearing. (Superior Court Order, April 9, 2022.)

The superior court conducted an evidentiary hearing on May 3, 2022. At the hearing, the competency court heard testimony from Dr. Amezcua-Patino and Dr. Vega, both of whom evaluated Dixon to determine his competency to be executed. The court also received 39 exhibits admitted into evidence, including the relevant reports of Dr. Amezcua-Patino and Dr. Vega.

Dr. Amezcua-Patino diagnosed Dixon with schizophrenia but conceded during his testimony that Dixon's schizophrenia diagnosis does not mean that he is incompetent to be executed. (R.T. 5/3/22, a.m., at 35–36; R.T. 5/3/22, p.m., at 20.) Dr. Amezcua-Patino further testified that Dixon has a history in which he "manifested schizophrenia-like symptoms, in particular, paranoia and some behaviors that may be perceived as being asocial or antisocial." (R.T. 5/3/22, a.m., at 52.) Dr. Amezcua-Patino also agreed that Dixon knows the fact that the State intends to execute him for the murder of Ms. Bowdoin. (R.T. 5/3/22, p.m., at 13.) Dr. Amezcua-Patino opined that: (1) Dixon "holds a fixed delusional belief that his incarceration, conviction, and forthcoming execution stem from his wrongful arrest by the NAU police in 1985", (Addendum to Amezcua-Patino 3/31/22 Report); (2) Dixon is incompetent to be executed because he is "unable to rationally understand why he has not obtained relief on" his legal claims regarding DNA suppression, and he reports that he believes the courts have denied his legal claims because they fear embarrassment, (R.T. 5/3/22, a.m., at 64–65); and (3) Dixon believes this fear of embarrassment is the reason the State seeks to execute him. (*Id.* at 63.) When asked by the Superior Court why he concludes that Dixon's legal theories are delusional, Dr. Amezcua-Patino stated that Dixon's schizophrenia diagnosis "in itself raises a probability of delusional thinking." (R.T. 5/3/22, p.m., at 13–20.)

Dr. Vega testified that during his evaluation on April 23, 2022, Dixon was very cordial and easy to understand. (R.T. 5/3/22, at 33.) Dr. Vega remarked that Dixon is "obviously an average to above average intellect. His verbal intelligence is quite high …." (*Id.* at 35.) Dr. Vega further found that Dixon's comments about politics during the interview showed that Dixon "has a very good grasp of reality." (*Id.* at 36.) Dr. Vega further found that Dixon did not show symptoms of being delusional during his interview. (*Id.* at 37.) When Dr. Vega inquired about Dixon's legal theories involving the suppression of DNA evidence, Dixon stated that his DNA was at the murder scene and he was "not denying the evidence." (Vega Report; R.T. 5/3/22, p.m., at 39–40.) However, Dixon reported that he did not remember committing the murder, suggesting that he may have had an alcohol-induced blackout at the time of the offense. (Vega Report; R.T. 5/3/22, p.m., at 39–40.) Dixon further indicated that he didn't think it would be fair to be put to death for something he doesn't remember doing. (R.T. 5/3/22, p.m., at 40.) Dixon also stated that if he murdered the victim, then perhaps he deserved the death penalty, adding, "[B]ut if I was in another state, they wouldn't be killing me…" (Vega Report.)

When Dr. Vega asked Dixon how he would feel if he were to have a memory of having killed the victim, Dixon stated that he would feel a sense of relief on his way to his execution. (R.T. 5/3/22, p.m., at 40; Vega Report.) Dr.

Vega further explained that Dixon is convinced that the DNA evidence obtained from the 1985 sexual assault that eventually tied him to the murder was unlawfully obtained, and therefore Dixon does not believe he should be executed "because of the fact that they have obtained something that is illegally obtained…." (R.T. 5/3/22, p.m., at 40–41.) Dr. Vega further opined that Dixon's belief that his legal challenges are valid is an aspect of his narcissistic personality, but that Dixon was not delusional in continuing to raise his challenges although the claims had a low probability of success. (*Id*. at 41–42.)

Dr. Vega opined that Dixon has antisocial personality disorder with empowerment and narcissistic features. (R.T. 5/3/22, p.m., at 63.) Dr. Vega stated that Dixon's history of repeated criminal and maladaptive behavior is "pretty good evidence" of antisocial personality disorder. (*Id.* at 88.) When challenged about his diagnosis of antisocial personality disorder, Dr. Vega stated that the DSM is a "guide" and that he rendered his diagnosis using his clinical judgment. (*Id.* at 42–43, 90, 108.)

Dr. Vega concluded that even if Dixon's reported belief that the courts have rejected his claims because they fear embarrassment is the product of delusional thinking, it does not prevent him from rationally understanding the State's reason for his execution, because Dixon rationally understands the "connection" between the murder and his execution. (R.T. 5/3/22, p.m., at 44–45.) Furthermore, Dr. Vega

opined that Dixon "wants to do everything that he can in order to see whether there is a possibility that [the courts] would accept his position and not execute him," and therefore Dixon "absolutely understands the connection" between his murder and the execution. (*Id.* at 107–09.)

On the night the hearing concluded, the competency court issued a six-page order finding that Dixon failed to prove he was incompetent to be executed. As stipulated by the parties, the court addressed Dixon's competency under the standard from *Panetti v. Quarterman*, 551 U.S. 930, 958–59 (2007), whether Dixon's "mental state is so disordered by a mental illness that he lacks a rational understanding of the State's rationale for his execution." (R.T. 5/3/22 a.m., at 11-12.)

The court found that Dixon "has a mental disorder or mental illness of schizophrenia," but explained that this diagnosis "does not decide the question of competency." (Superior Court Ruling, May 3, 2022.) The court then discussed Dixon's argument, supported by Dr. Amezcua-Patino's testimony, that Dixon's fixation on the NAU issue is delusional and demonstrates incompetence, especially his belief that the court denied his claims as a means of protecting the government and police from "embarrassment" and that his execution will result in an "extra-judicial killing." *Id.* at 3. The court also acknowledged that Dr. Amezcua-Patino reported Dixon as saying that the courts ruled against him on the NAU issue not

because "the judges, attorneys for the state, or his own attorneys were plotting against him," but because "they have a firm and decided philosophy that law enforcement should always be backed up." *Id.* at 3. The court found that the NAU issue was not dispositive but provided "insight" into Dixon's competency. *Id.* at 3–4.

The court also found that Dixon's statements to Dr. Vega provided insight into his understanding of the reason for his execution; in particular, his statement that he would feel relief on the way to his execution if he finally had a memory of committing the murder. *Id.* at 4. The court also found that, while Dixon was schizophrenic, he is intelligent and his pro se court filings show "sophistication, coherent and organized thinking, and fluent language skills." *Id.* at 4. Although the court also noted that Dr. Amezcua-Patino stated that intelligence does not preclude incompetence. *Id.*

The competency court also found that, although Dixon claimed no memory of the murder, "there is no evidence of dementia or a related impairment that would otherwise implicate an Eighth Amendment concern." *Id.* Finally, referring to the entirety of the record, the court concluded that Dixon failed to prove, either by clear and convincing or a preponderance of the evidence, that his "mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." *Id.* at 5–6.

In the evening of May 7, 2022, four days after the superior court issued its decision, Dixon petitioned the Arizona Supreme Court for special action review of the competency court's decision. (Petition for Special Action.) The Arizona Supreme Court denied review on the morning of May 9, 2022, and Dixon filed a petition for writ of habeas corpus in the district court. Arizona Supreme Court Denial of Review, May 8, 2022.) The district court issued its order denying habeas relief and denying Dixon's request for a stay of execution as moot on the morning of May 10. (District Court Order, May 10, 2022.) The district court also denied a certificate of appealability because "reasonable jurists could not debate its resolution of Dixon's competency claim." (*Id.* at 25.)

II. APPLICABLE LAW.

A. Legal standards under AEDPA.

Under AEDPA, this Court may not grant a writ of habeas corpus to a state prisoner on a claim adjudicated on the merits in state court proceedings unless the state court's adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1), or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 2254(d)(2).

Under the "unreasonable application" prong of § 2254(d)(1), relief is available where a state court "identifies the correct governing legal rule from [the Supreme] Court's cases but unreasonably applies it to the facts of the particular . . . case" or "unreasonably extends a legal principle from [Supreme Court] precedent to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply." *Williams v. Taylor (Terry)*, 529 U.S. 362, 407 (2000).

"Clearly established federal law" refers to the holdings, as opposed to dicta, of the Supreme Court's decisions at the time of the relevant state court decision. *Id.* at 412. "[C]ircuit precedent does not constitute 'clearly established Federal law'" and "cannot form the basis for habeas relief under AEDPA." *Parker v. Matthews*, 567 U.S. 37, 48–49 (2012); *see Carey v. Musladin*, 549 U.S. 70, 76–77 (2006). A reviewing court may, however, "look to circuit precedent to ascertain whether it has already held that the particular point in issue is clearly established by Supreme Court precedent." *Marshall v. Rodgers*, 569 U.S. 58, 63 (2013).

The Supreme Court has emphasized that under § 2254(d)(1) "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Williams (Terry)*, 529 U.S. at 410, (O'Connor, J., concurring); *see Bell v. Cone*, 535 U.S. 685, 694 (2002). To obtain habeas relief, therefore, "a state prisoner must show that the state court's ruling on the claim being presented in

federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011); *see Shinn v. Kayer*, 141 S. Ct. 517, 526 (2020) (per curiam); *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The burden is on the Dixon to show "there was no reasonable basis for the state court to deny relief." *Richter*, 562 U.S. at 98.

With respect to § 2254(d)(2), a state court decision "based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). A "state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance." *Wood v. Allen*, 558 U.S. 290, 301 (2010). Even if "[r]easonable minds reviewing the record might disagree" about the finding in question, "on habeas review that does not suffice to supersede the trial court's . . . determination." *Rice v. Collins*, 546 U.S. 333, 341–342 (2006); *see Hurles v. Ryan*, 752 F.3d 768,778 (2014) (explaining that on habeas review a court "cannot find that the state court made an unreasonable determination of the facts in this case simply because [the court] would reverse in similar circumstances if th[e] case came before [it] on direct appeal"). The prisoner

bears the burden of rebutting the state court's factual findings "by clear and convincing evidence." § 2254(e)(1).

Significantly, "review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011); *see Murray v. Schriro*, 745 F.3d 984, 998 (9th Cir. 2014) ("Along with the significant deference AEDPA requires us to afford state courts' decisions, AEDPA also restricts the scope of the evidence that we can rely on in the normal course of discharging our responsibilities under § 2254(d)(1)."). The Ninth Circuit has observed that "*Pinholster* and the statutory text make clear that this evidentiary limitation is applicable to § 2254(d)(2) claims as well." *Gulbrandson v. Ryan*, 738 F.3d 976, 993 n. 6 (2013) (citing § 2254(d)(2) and *Pinholster*, 563 U.S. at 185 n. 7).

When, as here, a state supreme court summarily denies discretionary review, a reviewing federal court must "'look through' that unexplained decision to the last state court to have provided a 'reasoned' decision." *Castellanos v. Small*, 766 F.3d 1137, 1145 (9th Cir. 2014).

B. Applicable clearly established federal law.

"[T]he Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." *Ford*, 477 at 409–10. "The critical question is whether a 'prisoner's mental state is so distorted by a mental illness' that he

lacks a 'rational understanding' of 'the State's rationale for [his] execution.'" *Madison v. Alabama*, 139 S. Ct. 718, 723 (2019) (quoting *Panetti*, 551 U.S. at 958–59). A rational understanding requires more than just an awareness of the State's rationale. *Panetti*, 551 U.S. at 959. Put another way, "the issue is whether a 'prisoner's concept of reality' is 'so impair[ed]' that he cannot grasp the execution's 'meaning and purpose' or the 'link between [his] crime and its punishment'." *Id.* (quoting *Panetti*, 551 U.S. at 958, 960).

Mental illness or lack of memory of the crime do not alone establish incompetence. "What matters is whether a person has the 'rational understanding' *Panetti* requires—not whether he has any particular memory or any particular mental illness." *Madison*, 139 S. Ct. at 727. Moreover, "[p]rior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his present mental condition." *Panetti,* 551 U.S. at 934. Finally, as the Court observed in *Panetti*, "The mental state requisite for competence to suffer capital punishment neither presumes nor requires a person who would be considered "normal," or even "rational," in a layperson's understanding of those terms. 551 U.S. at 959.

Once a prisoner makes a requisite threshold showing of incompetency, the protection afforded by procedural due process includes, at a minimum, a "fair hearing" and an "opportunity to be heard." *Panetti*, 551 U.S. at 949 (quoting *Ford*,

477 U.S. at 424, 426.) A state court's failure to provide these procedures constitutes an unreasonable application of clearly established Supreme Court law. *Id.* at 948.

III. THE STATE COURTS REASONABLY DENIED DIXON'S COMPETENCY CLAIM.

Dixon argued in the district court that the state competency court's decision was based on unreasonable determinations of fact under 28 U.S.C. § 2254(d)(2) and that the competency court unreasonably applied *Ford*/*Panetti*. He is incorrect. The district court correctly denied Dixon's habeas petition and denied a COA because the state courts correctly applied applicable Supreme Court precedent and reasonably concluded that Dixon failed to establish he is incompetent to be executed.

A. The competency court did not rely on any unreasonable determinations of fact.

Dixon argued in the district court that the competency court's ruling was based on unreasonable determinations of fact under 28 U.S.C. § 2254(d)(2). He is incorrect; the competency court's decision was based on reasonable determinations of the facts in the record.

Dixon contended that the competency court unreasonably determined the facts when it considered his intelligence and the coherence and organized thinking of his written pleadings as part of its analysis into competency to be executed. This was not unreasonable, however, because the competency court also

acknowledged that Dr. Amezcua-Patino testified that the presence of intelligence does not preclude a finding of incompetency.

Dixon also argued that the competency court unreasonably determined the facts because it based its decision on Dr. Vega's observations about Dixon's mental competency while at the same time suggesting that Dr. Vega's diagnosis of ASPD was invalid. As the district court noted, however, the competency judge "carefully judged Dr. Vega's credibility and made reasonable discernments between Dr. Vega's opinion and his observations." District court ruling at 19. And while Dixon points out that Dr. Vega did not retain the recording of his interview with Dixon, he failed to establish that his own expert, Dr. Amezcua-Patino even recorded his interviews, much less retained any recordings. Moreover, even if Dr. Vega's diagnostic approach was somehow flawed, that does not negate his ability to accurately report his observations about Dixon or describe his conversation with Dixon. Thus, even if it disagreed with Dr. Vega's diagnostic conclusions, it was not unreasonable for the competency court to nonetheless rely on Dr. Vega's observations.

Dixon also argued that it was unreasonable for the competency court to characterize his NAU claim as "arguably delusional." But the state court's characterization was not unreasonable in light of Dixon's statement to Dr. Amezcua-Patino that the judicial system was not biased against him but was

instead biased in favor of law enforcement. As the district court noted, Dixon's statement "would be difficult to characterize as purely delusional." District court ruling at 20 (citing *Wood v. Stephens*, 619 F.App'x 304, 309 (5th Cir. 2015)).

The Court stated in *Madison* that "delusions come in many shapes in sizes, and not all will interfere with the understanding that the Eighth Amendment requires." 139 S. Ct. at 729 (citing *Panetti*, 551 U.S. at 962). A delusion renders a prisoner incompetent to be executed only when it "may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." *Panetti*, 551 U.S. at 960. As the district court summarized, "Dixon has one delusion":

> that the NAU issue is meritorious and that courts have denied it out of bias for the prosecution or to avoid embarrassment from his wrongful prosecution. Yet, that delusion is not so removed from reality that his punishment can serve no proper purpose. It was not unreasonable for the competency court to find that this belief did not impair Dixon's rational understanding of the reason for his execution.

District court ruling at 20.

The state courts did not make an unreasonable determination of facts in light of the evidence in the record and Dixon has failed to overcome the presumption that the Arizona Supreme Court's finding that his evidence did not rebut the presumption of competency is correct. Thus, the district court correctly rejected Dixon's argument that the state court's decision was contrary to § 2254(d)(2).

B. The state courts reasonably applied *Ford*/*Panetti*.

Dixon argued that the competency court acknowledged the correct standard for competency to be executed but failed to apply it. He contended that the court actually applied a too-restrictive standard that was rejected in *Panetti* based on mere "awareness" that the state wants to execute him. The district court correctly found that the state courts applied the proper standard from *Panetti*.

The competency court applied the correct standard from *Panetti*: whether Dixon's "mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution." Pinal County Superior Court ruling at 2. The Supreme Court acknowledged in *Panetti* that "a concept like rational understanding is difficult to define." 551 U.S. at 959. The Court did not purport to create "a rule governing all competency determinations," but instead held that the trial court should have considered the defendant's "severe, documented mental illness" before dismissing his claim of incompetence. *Id.*

Here, the state court fully considered Dixon's schizophrenia and delusional beliefs. *See Ferguson v. Sec'y, Fla. Dep't of Corr.*, 716 F.3d 1315, 1324 (11th Cir. 2013) (explaining that state court applied the correct standard by taking into account petitioner's "paranoid schizophrenia and delusional belief that he is the Prince of God" before finding him competent). In fact, the court found that Dixon suffers from schizophrenia. The court correctly observed, however, that a

diagnosis of Dixon's mental illness is not itself dispositive of his competence. *Madison*, 139 S. Ct. at 727.

Both experts agreed that Dixon knows that he was sentenced to death for Deana Bowdoin's murder. The competency court reasonably considered Dixon's statements to Dr. Vega demonstrating that he is aware that the murder, not any conspiracy or cover-up by the judicial system, that led to his death sentence and upcoming execution. For example, Dixon's statement that he wished he was in a state that did not have the death penalty demonstrates that he understands the connection between his crime and his sentence. *See Ferguson*, 716 F.3d at 1340 (despite schizophrenic petitioner's expressed beliefs that "he had been anointed the Prince of God, that he would be resurrected . . . to sit at 'the right hand of God,' and that he would eventually return to Earth," state court reasonably found him competent for execution under *Panetti* where he "acknowledged that he was going to be executed because of the eight murders he committed, acknowledged that he would be the first inmate to receive Florida's new lethal-injection protocol, and acknowledged that he would physically die as an immediate result of being executed").

Other statements by Dixon demonstrate his rational understanding of the connection between his conviction of Deana Bowdoin's murder and his execution. For example, he stated that he would bring the victim back if he could, Vega report

at 5; that if he killed the victim on purpose then maybe he was deserving of the death penalty, *id.*; and that if he had a memory of killing the victim he would feel a sense of relief on his way to execution, *id*. *See Madison*, 139 S. Ct. at 727 (explaining that "a person who can no longer remember a crime may yet recognize the retributive message society intends to convey with a death sentence)."

The competency court's conclusion is reasonable in light of these statements because, as the district court concluded, they support a finding that Dixon has "'come to grips' with the punishment's meaning." *Id.* at 729 (citing *Panetti*, 551 U.S. at 958). They affirmatively demonstrate that Dixon has the ability to "grasp the execution's 'meaning and purpose' [and] the 'link between [his] crime and its punishment.'" *Id.* at 723 (quoting *Panetti*, 551 U.S. at 958, 960); *see Coe v. Bell*, 209 F.3d 815, 826–27 & n.4 (6th Cir. 2000) (finding petitioner "comprehended" his sentence and its implications where he chose a method of execution and refused a sedative so that he would be able to "deal with" God).

Dixon attempted to draw a parallel between his delusion and the delusions of the prisoner in *Panetti*, who believed the state wanted to execute him to stop him from preaching. But the Supreme Court did not find that *Panetti*'s delusion rendered him incompetent; instead, it remanded to the district court to make that

determination in the first instance.[2] And, as demonstrated above, Dixon's "delusion" about the NAU legal claim does not prevent him from rationally understanding the reasons for his execution.

Moreover, as the district court found, "the nature of Dixon's delusion is less suggestive of incompetence than the delusions Panetti experienced." District court ruling at 23 (citing *Panetti*, 552 U.S. at 954 (explaining that *Panetti's* "genuine delusion" involved the reason for his execution which he viewed as "part of spiritual warfare . . . between the demons and the forces of the darkness and God and the angels and the forces of light"); *see, e.g.*, *Billiot v. Epps*, 671 F.Supp.2d 840, 882 (S.D. Miss. 2009) (finding schizophrenic petitioner incompetent based on his delusional belief that he would not be executed if he took his medication)). And numerous courts have found that "adherence to a discredited legal theory," which is the nature of Dixon's so-called "delusion," is insufficient to suggest a lack of competence in the context of competency to be tried. *United States v. Anzaldi*, 800 F.3d 872, 878 (7th Cir. 2015) (citing *United States v. Jonassen*, 759 F.3d 653, 660 (7th Cir. 2014); *United States v. Alden*, 527 F.3d 653, 659–60 (7th Cir. 2008); *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003)).

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[2] Moreover, the district court here noted that "no court has yet found that Panetti was incompetent to be executed." District court ruling at 23.

The state court did not apply a more restrictive "awareness" standard than that required by *Panetti*. Instead, the competency court reasonably applied *Panetti* in finding that Dixon failed to rebut the presumption of competency under either a clear-and-convincing or a preponderance-of-the-evidence standard. Thus, the state court's decision was not "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103; *see Ferguson*, 716 F.3d at 1340, 1342 ("Both the reasoning and outcome of the Supreme Court's decision in *Panetti* leave ample room for fair-minded jurists to conclude, as the state courts did here, that Ferguson is mentally competent to be executed despite his mental illness and the presence of a delusional belief.") (citing *Renico v. Lett*, 559 U.S. 766, 776 (2010)).

IV. DIXON SHOULD NOT BE GRANTED A STAY OF EXECUTION.

Because, as established above, the district court did not err when it denied Dixon's habeas petition, this Court should likewise deny his eleventh-hour request for a stay of execution. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1760 (2009) (quoting *Virginian R. Co. v. United States*, 272 U.S. 658, 672 (1926)). Moreover, "a stay of execution is an equitable remedy. It is not available as a matter of right, and equity must be sensitive to the State's strong interest in

enforcing its criminal judgments[.]" *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Both the State and the victims of crime have an important interest in the timely enforcement of a sentence." *Id*. (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)).

As the district court correctly found, Dixon's habeas claim has no merit. This Court thus affirm the denial of habeas relief and deny his request for a last-minute stay of execution.

CONCLUSION

Based on the foregoing, this Court should deny Dixon's request for a stay of execution, and affirm the district court's denial of habeas relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 10, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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